

Supreme Court Summaries

Opinions filed May 19, 2016

People v. Cotto, 2016 IL 119006

Appellate citation: 2015 IL App (1st) 123489

JUSTICE KILBRIDE delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, Karmeier, Burke, and Theis concurred in the judgment and opinion.

This Cook County appeal arises from a postconviction proceeding. Jesus Cotto was previously convicted of armed robbery, for which he received a natural life sentence in 2008 as a habitual offender. After his conviction and sentence were affirmed, he filed a postconviction petition in 2011, using retained counsel.

The postconviction petition was not dismissed at the first stage of the proceedings, at which a trial judge considers whether the claims are frivolous or patently without merit. The petition moved on to the second stage, at which a court considers whether the petitioner has made a substantive claim of a constitutional defect at the original trial. Petitioner Cotto had a long list of claims, most challenging the quality of the performance of trial and appellate counsel. There was also an issue as to the timeliness of the postconviction petition. A hearing was held, with arguments. The State made a motion to dismiss the petition, which the trial court granted. In dismissing the petition, the trial court did not reference the issue of timeliness or otherwise indicate that the dismissal was based on the petition's untimely filing. Cotto appealed.

In the appellate court, Cotto argued solely that his privately retained postconviction counsel was ineffective at the second stage of the proceeding on the issue of untimeliness. The appellate court rejected Cotto's argument and affirmed the petition's dismissal. This appeal to the supreme court followed.

Before the supreme court, as in the appellate court, the only remaining error alleged by the petitioner was that his retained postconviction attorney failed to adequately explain the delay in the filing of the petition. Thus, he forfeited his other claims. The supreme court found that retained postconviction counsel had ably discharged his duties. The claim that reasonable assistance was not provided was rejected. In this case, it is notable that the petition had not been dismissed as untimely in the first place.

However, this appeal raises the issue of what level of assistance a postconviction petitioner is entitled to when his counsel is retained, as opposed to appointed. Although the appellate court reached the same result as the supreme court, it had followed an appellate court decision from 2013 which had held that the

“reasonable assistance” standard for postconviction counsel performance does not apply if counsel is retained. In this opinion, the supreme court overruled that decision, thereby resolving the conflict which had arisen within the appellate court. Although postconviction proceedings are meant to seek out constitutional defects from the original trial, there is no constitutional right to counsel in postconviction proceedings. They are statutory and call for a reasonable level of assistance by any attorney. Petitioner received that level of assistance here.